SUPREME COURT OF THE UNITED STATES

(9)

ANTHONY LEO STUTSON

94–8988 *v.*

UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

ALEXIS LAWRENCE, GUARDIAN AND NEXT FRIEND ON BEHALF OF KEMMERLYN D. LAWRENCE, A MINOR

94–9323 (9) *v.*

SHIRLEY S. CHATER, COMMISSIONER OF SOCIAL SECURITY

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Nos. 94–8988 AND 94–9323. Decided January 8, 1996.

CHIEF JUSTICE REHNQUIST, concurring in No. 94–9323 and dissenting in No. 94–8988.

I agree, for the reasons given by JUSTICE SCALIA, that the Court is mistaken in vacating the judgment in No. 94–8988, *Stutson* v. *United States*. I also agree with much of the rest of JUSTICE SCALIA's dissent, but I do not agree with that portion *post*, at 3–4, dealing with what he describes as "situations calling forth the special deference owed to state law and state courts in our system of federalism." Of the three cases which he cites for this proposition, one, *Missouri ex rel. Wabash R. Co.* v. *Public Serv. Comm'n*, 273 U. S. 126 (1927), came to this Court on writ of error and therefore was required to be decided on the merits. The second, *State Farm Mut. Automobile Ins. Co.* v. *Duel*, 324 U. S. 154 (1945), came to us on appeal from a State Supreme Court, and was thus also required to be decided on the merits. The third, *Huddleston* v. *Dwyer*, 322 U. S. 232 (1944), was

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a case in which certiorari had already been granted, and the case argued on the merits. None of them, then, involved a choice between denying certiorari, on the one hand, and simply vacating the judgment of the lower court without any opinion, on the other. Vacating a judgment without explanation when the alternative is to simply deny certiorari involves at best the correction of perceived error made by the lower courts. In this connection, we would do well to bear in mind the admonition of Chief Justice William Howard Taft, one of the architects of the Certiorari Act of 1925, as described by his biographer:

> "It was vital, he said in opening his drive for the Judges' bill, that cases before the Court be reduced without limiting the function of pronouncing 'the last word on every important issue under the Constitution and the statutes of the United States.' A Supreme Court, on the other hand, should not be a tribunal obligated to weigh justice among contesting parties.
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> 'They have had all they have a right to claim,' Taft said, 'when they have had two courts in which to have adjudicated their controversy.'" 2 H. Pringle, The Life and Times of William Howard Taft 997–998 (1939).

I agree with the decision announced in the *per curiam* to vacate the judgment of the Court of Appeals for the Fourth Circuit in No. 94–9323, *Lawrence* v. *Chater*. Whether or not the change of position by the Social Security Administration is "cognizable," in the words of JUSTICE SCALIA, *post*, at 11, it is perfectly reasonable to request the Court of Appeals to answer that question in the first instance.